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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. Robert Atkinson
Deputy Chief – Common Carrier Bureau
Mr. Thomas Krattenmaker
Office of Plans and Policy – Common Carrier Bureau
Federal Communications Commission
The Portals
445 Twelfth Street, SW
Washington, DC 20554

Re: CC Docket No. 98-141

Dear Messrs. Atkinson and Krattenmaker:

I recently participated in the Common Carrier Bureau's forum exploring conditions that might be necessary to ameliorate the harm to competition that would result from the proposed merger of SBC and Ameritech. As the representative of NEXTLINK Communications, Inc., a facilities-based CLEC, I hoped that my testimony would illustrate the predictable and harmful effects of unleashing a combined SBC/Ameritech upon the marketplace without sufficient safeguards.

At the forum, representatives of Ameritech and SBC tried to characterize those entities opposing unconditional approval of the merger as self-serving alarmists. After the fact, I find myself with a compelling rejoinder to this claim supplied by SBC itself in its April 29, 1999 testimony before the Texas House State Affairs Committee. As you know, the Texas Legislature is considering a bill to provide SBC with greater pricing flexibility in that state. In his testimony supporting increased flexibility David Cole, president of Southwestern Bell Telephone – Texas, assured state legislators that the telecommunications market is sufficiently robust that even with less stringent regulation, SBC "will not run AT&T out of business, will not run MCI out of business." Mr. Cole then had the following exchange with Texas Representative Sylvester Turner:

Rep. Turner: What about the CLECs? What about companies that are now on the same level as AT&T?

Mr. Cole: If they stay within their niche market, they will continue to be players, just like the competitive access providers. There is a lot of them around still today.

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Rep. Turner: Let me say this, David - - and, again, I - and I don't want to push you, and I think they would probably take issue with saying, "Stay within the niche market" if they want to go beyond their niche market, and that may be - their argument is that if you're allowed to engage in the flexibility pricing, they will never go beyond their niche market. . . .

Representative Turner is correct. We do take issue with Mr. Cole's admonishment that as long as we confine ourselves to the "niches" SBC will be content to let us continue to compete. We urge the Commission to take note of the cynical, monopolistic philosophy underpinning Mr. Cole's remarks. The Commission has before it the SBC/Ameritech merger application, various RBOC requests for regulatory relief and pricing flexibility and is expecting additional Section 271 applications. Before any of these requests for regulatory approval or relief are granted, the Commission must ensure that any RBOC that shares the same competitive philosophy as SBC is disabused of the notion that it, not the marketplace, has the power to determine the face of competition in this country. This will only occur when the local exchange marketplace is completely and irrevocably open to competition. As Mr. Cole's remarks illustrate, that condition does not exist today. Consequently, any consideration of RBOC regulatory approval or relief, including the SBC/Ameritech merger application, must either be denied or sufficiently conditioned to achieve the market-opening objectives of the Telecom Act for all players, large and small.

Sincerely,



R. Gerard Salemme
Senior Vice President

Cc: Chairman William Kennard
Commission Harold Furchtgott-Roth
Commission Susan Ness
Commissioner Michael K. Powell
Commissioner Gloria Tristani
Attached service list

TRANSCRIPT OF PROCEEDINGS
BEFORE THE
HOUSE STATE AFFAIRS COMMITTEE

BILL RELATING TO THE)
REGULATION OF)
TELECOMMUNICATIONS) SENATE BILL 560
UTILITIES AND THE PROVISION)
OF TELECOMMUNICATIONS)
SERVICES)

PUBLIC HEARING
THURSDAY, APRIL 29, 1999

BE IT REMEMBERED THAT on Thursday, the
29th day of April 1999, the above committee met
in the Capitol Annex, Room E2.014, in Austin,
Texas; and the following proceedings were
reported by Aloma J. Kennedy, A Certified
Shorthand Reporter of:

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1 because you're paranoid doesn't mean that
2 people aren't after you or something.

3 (Laughter)

4 REP. WOLENS: And I think
5 that it's reasonable for us to consider
6 what is theoretical and speculative if
7 there is some seed of concern on our part
8 and to head it off at the pass. So it --
9 doesn't "exercise" mean the notion that it
10 is speculative if there is a reasonable
11 basis for it?

12 Now, pardon me.

13 MR. COLE: And I will
14 address it, but I haven't heard any
15 reasonable based argument, but I can
16 address it exactly.

17 These similar arguments I
18 remember back in the mid-1980s. In fact,
19 Royce Holland was a founder of MFS. We
20 went through the same things as they
21 entered the market in a high-capped area,
22 the same thing. Those companies are not
23 around anymore.


24 Now, did it impact competition in
25 the market? Absolutely not. There is a

1 lot more competition, but just because a
2 company exits the market -- most all of
3 these companies, when they exit the market,
4 they exit with a premium. All of these
5 companies are not going to be around, and
6 I'd suggest to you as long as we're pricing
7 above our long-run incremental costs, I can
8 assure you here tonight that Southwestern
9 Bell will not run AT&T out of business,
10 will not run MCI out of business.

11 REP. TURNER: What about the
12 CLECs? What about the companies that are
13 now on the same level as AT&T?

14 MR. COLE: If they stay
15 within their niche market, they will
16 continue to be players, just like the
17 competitive access providers. There is a
18 lot of them around still today.

19 REP. TURNER: Let me say
20 this, David -- and, again, I -- and I don't
21 want to push you, and I think they would
22 probably take issue with saying, "Stay
23 within the niche market" if they want to go
24 beyond their niche market, and that may
25 be -- their argument is that if you're



1 allowed to engage in the flexibility
2 pricing, they will never go beyond their
3 niche market.

4 Let me get you to respond to the
5 other observation, and that is that if you
6 allow the pricing flexibility, then
7 Southwestern Bell will focus on the
8 customer-specific which means that if
9 you're in, let's say, the Houston/Harris
10 County market, and all of a sudden here
11 comes the other companies, and Southwestern
12 Bell is then able to target particular
13 customers or a particular zone and go
14 underneath the radar and capture that
15 market, and so in that sense, Southwestern
16 Bell, through this bill, is able to defeat
17 competition. What would be your
18 observation to that?

19 MR. COLE: Well, first, the
20 four CLEC witnesses both told you that
21 that's how they're targeting the market.
22 The only way I could do that is if my
23 network is more efficient than theirs, and
24 I assume right now it's a great network,
25 but they just built their network, and I

CERTIFICATE OF SERVICE

I, Cathleen A. Massey, do hereby certify that on this 18th day of May 1999, copies of the attached ex parte in CC Dct. No. 98-141 were served by first class mail, postage prepaid, or hand-delivered as indicated by an asterisk, on the following parties:

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